

REMARKS

In light of the above amendments and following remarks, reconsideration and allowance of this application are respectfully requested.

It is submitted that these claims, as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. Changes to these claims, as presented herein, are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

Claims 1-27 have been amended and are pending in this application. Un-elected claims 28-34 have been cancelled, however, the Applicants reserve the right to file one or more divisional applications directed to the subject matter of the cancelled claims.

In the office action, claims 4-6, 10-12, 21, and 27 have been objected to due to various informalities. These informalities primarily concern proper antecedent basis issues. In response, the indicated claims have been amended to correct these informalities. Accordingly, it is respectfully requested that the objections to the above-identified claims be withdrawn.

Claim 1-27 of the present invention have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, the Examiner has indicated that each element of claim 1 is unclear, confusing, or vague. Claims 2-27 are rejected for similar reasons.

In response, claims 1-27 have been amended to clarify various aspects of the present invention. Of particular note is the substitution of the term "digital data" for "material." It is

believed that this amendment, along with other amendments to the claims sufficiently clarify the present invention so as to distinctly claim the subject matter of the invention. Accordingly, it is respectfully submitted that claims 1-27 are in conformance with 35 U.S.C. § 112, second paragraph, and it is requested that the rejections to claims 1-27 be withdrawn.

Claims 9 and 11 have been rejected under 35 U.S.C. §102(b) as being anticipated by Alwadish (U.S. Patent No. 5,214,792). Applicants respectfully traverse the rejections for at least the following reasons.

Initially, the preambles of claims 9 and 11 recite, “A multi-channel digital data sending out apparatus,” and “A multi-channel digital data sending out method,” respectively. It is submitted that in the present invention, the preamble of the claims serves to further define, and indeed to “give life, meaning, and vitality” to the claims. Accordingly, the elements recited in the preamble must be considered in any rejection of such claims. MPEP § 2211.02.

It is respectfully submitted that the device and methods described in Alwadish are “single” channel devices and methods. Fig. 5 of Alwadish is representative of a system found in an FM radio broadcast station. (Column 6, Ins. 5-9). An FM radio station is by its very nature a single channel broadcast means. Radio stations are only entitled to broadcast on the single channel to which they are licensed. Further, the broadcast equipment is designed and optimized to transmit a signal at that single desired frequency. In fact, FM refers to frequency modulation, which is used to distinguish radio stations. Accordingly, the multi-channel elements of claims 9 and 11 are not taught by Alwadish, and it is respectfully submitted that claims 9 and 11 patentably distinguish over Alwadish and are allowable. Therefore withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

The Office Action also rejects claims 12 and 20 under 35 U.S.C. §103(a) as being unpatentable over Alwadish (U.S. Patent No. 5,214,792). Applicants respectfully traverse the rejection for at least the following reasons.

Initially, on page 7 of Office Action, the Examiner took Official Notice of the fact that monitoring data is well known in the art, and that it would have been obvious to the skilled in the art at the time of the invention to modify the system of Alwadish to have the data monitored at every stage of processing. In other words, the Examiner does not cite a reference that discloses monitoring data. Instead, the Examiner appears to assert that such feature of claims 12 and 20 would have been obvious. In this regard, reference is made to *In re Pardo and Landau*, in which the Court states:

“Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the applicant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference”.

214 USPQ 673, 677 (C.C.P.A 1982). In view of *In re Pardo and Landau*, it is believed to be improper for the Examiner to fail to cite a reference, which specifically describes the above-mentioned feature of claim 12 and 20.

In addition, it is respectfully submitted that the preambles of claims 12 and 20 must be considered as elements of the claim. Accordingly, as above, it is submitted that Alwadish does not teach a multi-channel data sending out apparatus or method.

Further, claim 12, as amended, recites, “a sending-out means for sending out the digital data converted by said conversion means to a transmission path as multi-channel digital data.” Similarly claim 20, as amended recites “a sending-out step for sending out digital data converted by said conversion step to a transmission path as multi-channel digital data.” It is respectfully

submitted that Alwadish does not teach transmission of "multi-channel digital data."

Accordingly, claims 12 and 20 patentably distinguish over Alwadish and are allowable.


Applicants therefore respectfully request that the rejection of claims 12 and 20 under 35 U.S.C. §103(a) be withdrawn.

It is to be appreciated that the foregoing comments concerning the disclosures in the cited prior art represent the present opinions of the applicant's undersigned attorney and, in the event, that the Examiner disagrees with any such opinions, it is requested that the Examiner indicate where in the reference or references, there is a basis for a contrary view.

Please charge any fees incurred by reason of this response and not paid herewith to
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Respectfully submitted,

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